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PNR, Inc. v. Beacon Property Management

PNR HINGE VERSUS BEACON PROPERTY. -- PNR, INC, VERSUS BEACON PROPERTY. ALL RIGHT. IF COUNSEL IS READY, YOU MAY PROCEED. I UNDERSTAND THAT YOU ALL HAVE DEGREED ON A DIVISION OF YOUR TIME AND SIMPLY ASK THAT, SO WE CAN MOVE SPEEDLY THROUGH THIS THAT, YOU ENFORCE THAT YOURSELF.

YES, WE WILL. GOOD MORNING. THANK YOU, YOUR HONOR. VINCE LoCURTO ON BEHALF OF THE PETITIONER. I WOULD LIKE TO THANK THE COURT FOR GRANTING JURISDICTION OVER THIS IMPORTANT CASE.

LET'S TALK ABOUT JURISDICTION. WHY IS OUR JURISDICTION? WHAT IS THIS CASE?

I BELIEVE THAT THE COURT ACCEPTED JURISDICTION IN THIS CASE, BECAUSE IT RECOGNIZED THAT THE PNR DECISION BELOW, BY THE FOURTH DISTRICT COURT OF APPEALS WAS EXTREMELY DEVASTATING AND EVISCERATED SOME OF THE IMPORTANT RIGHTS THAT WE ARE HERE ABOUT, WHICH IS UNDER THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT.

WHAT IS THE CONFLICT CASE? ANOTHER CONFLICT CASES ARE THOSE THAT WE CITED, THAT I CITED IN THE INITIAL BRIEF.

DELGADO?

THERE IS A HOST OF CASES THAT INVOLVED ONLY A SINGLE TRANSACTION. REMEMBERING THAT --

WHICH ONE OF THESE CASES INVOLVE A LEASE? WHICH CONFLICT CASE INVOLVES A LEASE?

WE ARE NOT AWARE OF A, OTHER THAN WE RELIED UPON, AT THE TRIAL LEVEL, THE KINGSTON SQUARE VERSUS THE GARDENS CASE, WHICH IS A RESIDENTIAL LANDLORD, WHICH IN FLORIDA APPLIED THE UNFAIR AND DECEPTIVE TRADE PRACTICES ACT WAS INVOLVED IN THIS CASE.

BUT WHAT DISTRICT COURT CASE?

THERE IS A DISTRICT COURT CASE. THE CIRRUS, NO, THE FRANCHISE. I AM SORRY. I AM FORGETTING FOR THE MOMENT. THERE WAS THE SARKIS VERSUS PATHFORD OIL. THAT CASE INVOLVED A LEASE, BUT I THINK WHAT IS IMPORTANT IS NOT WHETHER WE ARE DEALING WITH A LEASE THAT HAS BEEN APPLIED TO A FRANCHISEE, FRANCHISOR SITUATION IN LEHMAN VERSUS DRY CLEAN USA, AND I THINK THE IMPORTANT CRUX TODAY IS NOT WHETHER WE ARE DEALING WITH A LOCAL OR A TENT AND A FRANCHISOR -- OR A TENANT, AND A FRANCHISOR OR A FRANCHISEE OR THE DILIGENCE OF THAT THERE IS NO CASE IN FLORIDA THAT HAS INVOLVED MORE THAN A SINGLE INSTANCE OF VIOLATIVE CONDUCT, OF UNFAIR, UNSCRUPULOUS INCIDENT OF THE CASES CITED, THE NATURE OF THE CONDUCT IS WHAT IS IMPORTANT, SO HERE, TRYING, ATTEMPTING AS WE WOULD SAY THE RESPONDENT HAS IN THIS CASE, TO PIGEON HOLE THIS CASE AS A LANDLORD TENANT DISPUTE, I THINK MISSES THE MARK.

ISN'T THAT WHAT THE FOURTH DISTRICT PIGEON HOLED IT IN?

THAT IS WHAT THEY ERRONEOUSLY DID. THEY DID NOT LOOK AT THE FACTS OF THE CASE AND DESCRIBED IT AS A LANDLORD TENANT SITUATION. WE SUED AND BEACON WAS THE

MANAGEMENT COMPANY AND HERE IS WHERE THE FOURTH DISTRICT GOT DERAILED. THEY GOT DERAILED BECAUSE THEY OVERLOOKED THE IMPORTANT EVIDENCE THAT WE CITED EXTENSIVELY IN THE REPLY BRIEF, THAT THEY WERE RESPONSIBLE FOR THE MACHINES. THERE WAS NO QUESTION THAT BEACON WAS RESPONSIBLE FOR MAINTAINING THE PROPERTY.

LET'S GET TO THE, WHETHER THIS STATES A SUFFICIENT CLAIM UNDER THE UNFAIR TRADE PRACTICES ACT. WE, FIRST, HAVE TO QUASH THE FOURTH DISTRICT'S FINDING, LEGAL FINDING THAT A BREACH OF THE LEASE COVENANT TO MAINTAIN THE PREMISE CANNOT BE CHARGED AGAINST ANYONE ACCEPT THE LANDLORD, AND THAT IS FACT-SPECIFIC TO -- THIS CASE, SO IN ORDER FOR US TO GET TO ANYTHING, WE HAVE TO FIND THAT THAT IS INCORRECT, AS A MATTER OF LAW, BASED ON THE FACTS IN THIS CASE. IS THAT WHAT WE HAVE TO DO? ISLAND SUGGEST THAT, WHAT THE COURT NEED ONLY FIND IS THAT THE FOURTH DISTRICT TREADED ON THE PROVINCE OF THE JURY'S FACT FINDING. THE JURY, AFTER AN EIGHT-DAY TRIAL, HEARD ALL THE EVIDENCE.

BUT THAT IS NOT IN CONFLICT WITH ANY OTHER CASE. IN OTHER WORDS, EVERYTHING ELSE THAT THE FOURTH DISTRICT SAYS IS DICTA, BECAUSE THEY FIND, AS A MATTER OF LAW, THAT THERE WERE, THERE WAS NOTHING THAT THE DEFENDANTS DID, IN TERMS OF MAINTAINING THE PREMISES, THAT COULD BE ACTIONABLE, AS A MATTER OF LAW. THAT HAD NOTHING TO DO WITH AN INTERPRETATION OF THE FLORIDA UNFAIR TRADE PRACTICES ACT. THAT IS WHAT I AM HAVING TROUBLE WITH. JUDGE FARMER'S OPINION SEEMS TO CONTAIN A LOT OF DICTA. WE ACCEPTED IT, PERHAPS, BASED ON, WITHOUT LOOKING AT WHAT, REALLY, HE SAYS AT THE VERY BEGINNING OF HIS OPINION, WHICH IS THAT THERE IS NO LEGAL DUTY HERE THAT AROSE. CORRECT? AND THAT IS WHAT --

I THINK THAT IS WHAT HE ATTEMPTS, JUDGE FARMER IN HIS OPINION, DOES STATE THAT WE FIND ONLY THE LANDLORD IS RESPONSIBLE FOR MAINTENANCE. UNFORTUNATELY, KNOW, THE COURT OVERLOOKED WHAT THE JURY UNDERSTOOD AS ALL OF THE EVIDENCE THAT BEACON WAS RESPONSIBLE FOR THE MAINTENANCE NOT SIMPLY THE LANDLORD.

WOULD IT HELP YOU, IF WE SIMPLY SAID THAT THEY WERE WRONG ABOUT, THAT THERE NEEDS TO BE MULTIPLE ACTS. THAT IS WRONG, AND DON'T OVERTURN ANY OTHER PART OF THE OPINION. YOU WOULD WANT US TO GET TO THESE, THAT THEY WERE WRONG, AS A MATTER OF LAW, BASED ON THE FACTS IN THIS CASE. WE WOULD, CORRECT?

CORRECT. CORRECT. AS FAR AS MY CLIENT'S RIGHTS ARE CONCERNED, CERTAINLY THE COURT WOULD HAVE TO FIND, ALSO, THAT THE FOURTH DISTRICT OVERSTEPPED ITS JURISDICTION, WHEN IT FOUND, MADE FACT FINDING CONTRARY TO THE JURY'S FACT FINDING. AND SO THAT WOULD BE TRUE. BUT WHAT IS REALLY IMPORTANT ABOUT THIS CASE IS THE EFFECT IT WILL HAVE ON CASES TO FOLLOW. THERE IS A CASE THAT WAS CITED IN THE AMICUS CURIAE BRIEF THAT THE FIFTH DISTRICT HAS ALREADY FOLLOWED THE PNR DECISION, AND THEY APPROVED OF THE MULTIPLE MULTIPLE-ACT REQUIREMENT. THAT HAS NEVER BEEN HELD, IN CASE IN FLORIDA BEFORE, AND I THINK THAT THAT IS EXTREMELY IMPORTANT, BECAUSE THAT IS WHAT TAKES AWAY THE IMPORTANT RIGHTS, UNDER THE FLORIDA DECEPTIVE TRADE PRACTICES ACT. THIS IS AN IMPORTANT CONSUMER PROTECTION LEGISLATION THAT HAS BEEN EXPANDED OVER THE YEARS, WITH MULTIPLE AMENDMENTS, EXPANDED TO BROADEN THE SCOPE OF ITS COVERAGE AND ITS PROTECTIONS AND IN ONE FELL SWOOP, THE FOURTH DISTRICT HAS GUTTED THE PROTECTIONS OF THE FLORIDA DECEPTIVE TRADE PRACTICES ACT, BECAUSE NOW IT IS NOT ENOUGH TO PROVE THAT I WAS THE VICTIM AFTER DECEPTIVE TRADE PRACTICE, THAT THE DEFENDANT DID DECEPTIVE AND UNFAIR THINGS TO ME. NOW I MUST SHOW THAT THE DEFENDANT DOES THIS AS A REGULAR BUSINESS PRACTICE, AS HABITUAL AND CUSTOMARY ACT.

I THINK WHAT YOU ARE HEARING QUESTIONS ABOUT IS NOT SO MUCH THE SINGLE ACT, BUT THE CONCERN THAT MAYBE THE FLOATING AROUND THAT YOU DON'T CONVERT THE, THIS ACT, SO

THAT IT APPLIES TO EVERY BREACH AFTER LEASE, AND WHAT ABOUT THIS CASE, I THINK IS WHAT YOU ARE HEARING, WHAT ABOUT THIS CASE THAT IS A BREACH OF A LEASE BUT WHAT IS THE EGREGIOUS NATURE OF IT? IS IT USED FOR SOME OTHER PURPOSE? I MEAN, CERTAINLY DO WE TRANSFORM THE FAILURE TO SWEEP THE HALL INTO AN UNFAIR AND DECEPTIVE TRADE PRACTICES CASE? DO YOU SEE WHY I AM SAYING HERE?

YES. I CERTAINLY DO.

HERE, FOR EXAMPLE, WITH LeING THE MAINTENANCE -- WITH LETTING THE MAINTENANCE GET SO BAD THAT YOU WOULD FORCE THE TENANT OUT OF THE SPACE? WAS THERE AN ULTERIOR MOTIVE? WHAT ARE THE QUESTIONS ABOUT THE LEASE? I AM NOT HEARING AN ANSWER TO THOSE QUESTIONS, AND THAT IS WHAT THE COURT IS CONCERNED WITH.

I APPRECIATE THAT SITUATION THAT FOCUSES ON THE TRUE NATURE OF THIS DISPUTE, THAT BEACON DID ENGAGE IN A PATTERN OF DECEPTION AND UNFAIR TRADE PRACTICES, WHEN THEY ALLOWED THIS BUILDING, WE ARE NOT TALKING ABOUT SWEEPING THE FLOOR. WE ARE TALKING ABOUT BASIC MAINTENANCE OF THE PROPERTY, IN TERMS OF WATER PROOFING AND MAINTAINING THE ROOF. THIS BUILDING SAT NEAR THE OCEAN SO IT WAS SUBJECT TO A GREAT DEAL OF CORROSION. WILLIS, HIMSELF, TESTIFIED THAT HE SAW THE BUILDING CORRODING AROUND HIM. HE WAS ON THE PREMISE, HE MAINTAINED AN OFFICE THERE. BEACON HAD AN OFFICE AND ENGAGED IN TORTIOUS ACTS, AND THIS WAS HEINOUS NEGLIGENCE, TO THE POINT WHERE THE WALL COLLAPSED AND ELECTRICAL WIRES WERE TORN FROM THE BUILDING, AND THERE WERE OPEN GAS LINES THAT, FP&L HAD TO COME IN AND CLOSE THE BUILDING DOWN.

WAS THERE SOME ULTERIOR PURPOSE TO THIS?

YES, THERE WAS.

I DON'T THINK THAT HAS BEEN COMMUNICATED.

WE CITED IN THE BRIEF THAT THERE WAS A STRUGGLE BETWEEN JACAMINO, WHICH IS WHAT THE COURT HEARD, THAT HE WAS THE OWNER OF THE LAND, OCEAN ONE. JACAMINO WANTED TO LIVE UP TO THE PROMISES THAT WERE MADE IN THE INITIAL REHABILITATIVE ACT, TO IMPROVE THE BUILDING, AND THEY SHOWED AN ARTIST'S RENT REND ERRING WHAT THIS BEAUTIFUL BUILDING WOULD LOOK LIKE, AFTER THEY SPENT $300,000 IMPROVING IT AND HE WENT AROUND JACAMINO AND PURCHASED FROM THE BANK A $1.SOMETHING MILLION MORTGAGE FOR $300,000 OR $400,000, AND IT WAS AN EXTREME DISCOUNT. ONCE HE OWNED THAT MORTGAGE, HE HAD EVERY ULTERIOR MOTIVE TO FORECLOSE THE MORTGAGE AND FREEZE JACAMINO'S INTEREST IN THE BUILDING AND FREEZE THE TENANT OUT OF THE BUILDING. WHY THEY WANTED HIM OUT SO BAD IS WE HAD A 20-YEAR LEASE ON THE BUILDING, ENCONSUME BERING THE PROPERTY. WE SHOWED OFFERS BEFORE THE EXTINGUISHMENT OF THE LEASE, TO BUY THE PROPERTY AND AFTERWARDS. SO JUDGE FARMER DETERMINED THAT THEY HAD BENEFITED THE CORPORATION. IT WAS THE PARTNERS, THEY WERE INVOLVED IN THE SALE, THEMSELVES AND IT WAS THIS OFFER THAT FORCED THE SALE OF THE BUILDING. JACAMINO TESTIFIED THAT THEY SOLD THE BUILDING SIX MONTHS BEFORE THE TRIAL, THAT THEY SOLD THE BUILDING, BECAUSE THEY WERE GOING TO GET A JUDGMENT AGAINST THEM THAT WOULD ATTACH TO THE LAND AND THEY WOULD NOT BE ABLE TO SELL THE BUILDING.

HOW DOES THIS TRANSLATE TO THE MANAGEMENT OF THE BUILDING? BEACON WAS THE MANSIONMENT COMPANY, CORRECT?

THAT IS THE EVIDENCE WE INTRODUCED AT TRIAL, THAT THEY WERE THERE. THEY WERE NOT IGNORED. THEY WERE NOT JUST THERE TO COLLECT RENTS. THEY WERE THERE, AND A COLLOQUY BETWEEN MYSELF AND JACAMINO AT TRIAL, WHERE THEY WERE, WERE THEY RESPONSIBLE FOR THE AIR CONDITIONING? YES. THE ROOF? YES. THE WAS? YES.

HOW DID PNR FAIL TO PROOF THAT BEACON DID NOT BREACH THE MANSIONMENT -- THE MANAGEMENT CONTRACT? HOW COULD THAT GO ALONG WITH AN UNFAIR TRADE PRACTICE ARISING OUT OF A CONTRACT THAT WASN'T EVEN FOUN TO BE BREACHED?

I THINK WHAT THE JURY FOUND ON THAT WAS THAT THEY WERE NOT AN INTENDED THIRD PARTY BENEFICIARY, WHICH IS A VERY NARROW SHOWING THAT WE WERE REQUIRED TO MAKE, BECAUSE THE MANAGEMENT CONTRACT PRECEDED THE LEASE, THAT WE TOOK BY ASSIGNMENT, SO THEREFORE HOW COULD WE HAVE BEEN INTENDED, WHEN IT PRECEDED, CHRONOLOGICALLY, OUR EXECUTING OF THE LEASE, AND THAT IS WHY THE JURY DID NOT HOLD, THAT WAS THE ONLY CLAIM THAT THEY DID NOT FIND IN FAVOR OF PNR ON.

DIDN'T THE CONTRACT EXPIRE TWO MONTHS BEFORE THE ASSIGNMENT OF THE LEASE?

YES, BUT BEACON RATIFIED THAT CONTRACT, BYING IT TO ACT AS THE MAINTENANCE COMPANY,ING IT TO COLLECT RENT,ING IT TO -- CONTINUING TO COLLECT RENT, CONTINUING TO DO EVERYTHING. THEY NEVER ANNOUNCED TO SEND YOUR MONEY TO OCEAN ONE. THEY WERE CONTINUING TO COLLECT RENT.

CHIEF JUSTICE: WATCH YOUR TIME. YOU HAVE USED 12 MINUTES.

THANK YOU, YOUR HONOR. I HAVE USED MY ARGUMENT. COUNSEL HAS GRACIOUSLY YIELDED MORE TIME, AND THAT IS WHAT ACTUALLY GETS TO ANOTHER POINT THAT WE MADE IN THE BRIEF, WHICH IS THE FACT --.

WHAT ABOUT THE TWO PETITIONERS? ISN'T THERE SOMEONE BESIDES PNR THAT WAS PETITIONER?

NO, YOUR HONOR. THERE WAS AN AMICUS CURIAE FILED AND ALLOWED SOME TIME FOR THE AMICUS CURIAE TO SPEAK. IT WAS AN IMPORTANT MATTER THAT THERE WAS NO CONTRACT. IN FACT THAT, ONLY ILL YOU MEANNATES THE IMPORTANCE OF ALLOWING PNR TO HAVE A CLAIM AGAINST BEACON, UNDER THE DECEPTIVE TRADE PRACTICES ACT, BECAUSE IF THEY HAVE NO CONTRACT THEY ARE ON THE PROPERTY, BEACON REALTY.

WAS THERE ANY ONE RESPONSIBLE FOR WHETHER THE BUILDING WAS GOING TO STAY IN GOOD CONDITION OR FALL INTO TERRIBLE REPAIR THAT, BEACON WAS CHARGED WITH THAT RESPONSIBILITY. THAT IS WHAT THIS RECORD WILL SHOW.

THAT IS WHAT THE JURY CONCLUDED. THAT IS WHAT THE EVIDENCE SHOWED AND TO GO TO JUSTICE LEWIS'S EARLIER QUESTION, THERE WAS $180,000 IN CODE VIOLATIONS, MORE THAN ANY BUILDING IN THE HISTORY OF THE CITY OF BOCA RATON, WAS THE TESTIMONY AT TRIAL, SO WAS IT HEINOUS, AT ATROCIOUS? ABSOLUTELY. AND THAT IS WHAT TAKES THIS CASE OUT OF THE PIGEON HOLE OF THE BUILD TENANT DISPUTE THERE. IS NO RELATIONSHIP BETWEEN BEACON AND PNR. IT IS SIMPLY THE COMPANY IS BEING SUED FOR UNFAIR TRADE PRACTICES, BASED ON ULTERIOR MOTIVES AND ENGAGING IN THOSE ACTS TO FORCIBLY AND INTENTIONALLY FORCE THE TENANTS FROM THE BUILDING, AND THAT IS --

YOU ALSO CLAIMED THAT IT WAS WILLIS AND BEACON THAT TRIED TO INDUCE THE TENANT TO TAKE THE LEASE. ISN'T THAT INCONSISTENT WITH SAYING THAT, THEN, THAT THAT WAS HIS MOTIVATION?

WELL, AGAIN, THERE WAS, THERE WERE THE FRAUD THAT WAS COMMITTED WAS TELLING OUR, TELLING MY CLIENT THAT WE ARE GOING TO DO THESE IMPROVEMENTS, WHEN THEY HAD NO INTENT TO DO THAT. THERE, I CAN SEE WHERE THE COURT IS LOOKING AT SOME SORT OF INCONSISTENCY, BUT, AGAIN, THAT IS DUE, IN PART TO THE STRUGGEL THAT IS GOING ON, ALL

THAT WE DID NOT KNOW AT THE TIME, THE STRUGGLE THAT IS GOING ON BETWEEN JACAMINO AND WILLIS, JACAMINO, ON THE ONE HAND, WANTING TO MAINTAIN THE BUILDING AND IMPROVE IT AND GET IT OUT, THE PHILOSOPHY, AND WILLIS, ALL THE TIME WHO IS TRYING TO FORECLOSE HIS MORTGAGE AND WIFE EVERYONE OUT, AND THAT HAVE WHY THERE WAS A STRUGGLE AND SOME IN CONSISTSANCY, BUT THE FACT REMAINS THAT THE ACTS WERE VIOLATIVE OF THE FLORIDA UNFAIR TRADE PRACTICES ACT.

SO FAILING TO MAINTAIN PREMISE WOULD NEVER BE ENOUGH, AS A MATTER OF LAW, TO HAVE A VIOLATION OF AN UNFAIR, OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT. THERE HAS TO BE SOME IMPROPER MOTIVE, IN ORDER FOR IT TO GO TO THE JURY. IS THAT WHAT YOU WOULD AGREE WE WOULD HAVE TO --

I WOULD ADVOCATE THAT IT IS A CASE-BY-CASE BASIS, THAT IT IS A QUESTION OF THE NATURE OF THE TORTIOUS ACTS COMMITTED, A SIMPLE BREACH? A SIMPLE FAILURE? NO. WE ARE NOT TRYING TO SIMPLY CONVERT ALL LANDLORD/TENANT DISPUTES INTO THESE CLAIMS. BUT WHEN LIFE AND LIMB AND THE SAFETY OF THE PUBLIC IS PLACED IN DANGER AND THEN THE JURY AND THE COURT FINDS THAT 24 THIS WAS ALL DONE TO SATISFY PURELY SELFISH MOTIVES ON THE PART OF ONE OF DEFENDANTS WHO HAD CONTROL, BECAUSE WILLIS CONTROLLED WHAT HAPPENED WITH THE BUILDING, AND HE WAS NOT ONLY SELF-DEALING AGAINST THE CORPORATION.

YOU ARE GIVING A FACTUAL DESCRIPTION HERE, ALLEGEDLY ON THE BASIS AFTER CASE-BY-CASE BASIS, BUT HOW WOULD YOU CHARACTERIZE THE LEGAL REQUIREMENT PAST JUST A SIMPLE BREACH OR A SIMPLE NEGLIGENCE? IN OTHER WORDS HOW WOULD YOU CHARACTERIZE THE LEGAL PREREQUISITE FOR IT TO BE A VIOLATION OF THE TRADE PRACTICES ACT? IN OTHER WORDS, YOU HAVE GIVEN US THE FACTUAL CIRCUMSTANCES HERE AND SAID THIS ONE IS EGREGIOUS ENOUGH, YOU SHOULDN'T HAVE TO WORRY, BUT WHAT IS THE DEFINITION PAST JUST --

I THINK WHAT, EXCUSE ME, I THINK WHAT THE FATHER AND SON CASE STATED, WHICH WAS THE FOURTH DISTRICT, THAT STATED THAT A SPECIFIC RULE WAS NOT REQUIRED. THE COURT HAS CLEARLY, IN THE PAST THE COURTS HAVE TAKEN AN APPROACH WHERE WE ARE GOING TO LOOK AT THIS, BASED UPON THE NATURE OF THE ACTS, AND DEFINITIONS UNDER THE ACT ARE EXTREMELY BROAD, AND UNDER THE DAY VERSUS La JOINT CASE, IT IS UNFAIR WHEN THE FACT IS PUBLIC POLICY. YOU CAN SAY PUBLIC POLICY IS TO MAINTAIN BUILDINGS IN SAFE CONDITIONS, SO THAT THE WALLS DON'T FALL DOWN AND PEOPLE DIE ON THE PROPERTY.

YOU ARE SAYING THAT IS THE REAL BREACH?

NO. THE FOCUS IS NOT THE BREACH. THE FOCUS IS ON WHETHER THE ACTOR THE CONDUCT OFFENSES THE DECEPTIVE TRADE PRACTICES ACT. THE BREACH IS A SEPARATE ISSUE, WHICH WE DID NOT RELY UPON. THANK YOU.

CHIEF JUSTICE: MR. MARSHAL, HOW MUCH TIME TOTAL? IT LOOKS LIKE YOU ARE INTO YOUR REBUTTAL TIME NOW. HOW MUCH TIME? YOU JUST HAVE A FEW MINUTES REMAINING OF YOUR TOTAL TIME. UNLESS YOU WANT TO GIVE UP REBUTTAL.

A MINUTE FOR REBUTTAL.

THAT MEANS A MINUTE AND-A-HALF, NOW, IT IS GOING TO BE.

MY NAME IS MARK FISTOS. I AM WITH THE ACADEMY OF FLORIDA TRIAL LAWYERS. I SERVED AS ASSISTANT ATTORNEY GENERAL FOR TEN YEARS AND HIM HERE TO ADVISE THE COURT ON THE IMPORTANT PUBLIC ISSUE BEFORE THE COURT TODAY, AND THAT IS, JUSTICE PARIENTE NOTED, THE SINGLE SUBJECT, MULTISUBJECT PROVISION. THIS CASE, THE ONE CASE THAT IS DECIDING

BEACON ON THIS VERY ISSUE IS CREATING HAVOC FOR CONSUMERS AND ALSO FORWARDING THE PROSECUTIONS TO THE ATTORNEY GENERAL'S OFFICE IN VARIOUS WAYS. THE STATUTE, ITSELF --

PULL THE MIKE UP, PLEASE.

THE STATUTE, ITSELF, HAS BROAD PRESCRIPTIVE SECTION. IT ALSO HAS SEVERAL REMEDIAL SECTIONS, AND EACH ONE OF THOSE REMEDIAL SECTIONS TALKS ABOUT AN ACT SUFFICIENT TO BRING A CAUSE OF ACTION. IT IS SHRIMPLY ILLOGICAL TO ASCRIBE TO THIS STATUTE THAT THERE BE AN INTENT OF MULTI, REQUIREMENT. THE OTHER QUESTION THAT I WANTED TO ASK JUSTICE PARIENTE -- TO ANSWER JUSTICE PARIENTE'S QUESTIONS ABOUT IS WE ARE NOT HERE FOR A SEPARATE CAUSE OF ACTION. WHAT WE DO IS LOOK AT THE STANDARDS IN A STATUTE UNDER OBJECTIVE TERMS. SDEPS STATUTE IS WHETHER THERE IS AN ACTOR PRACTICE WHICH CONSUMERS MIGHT LIKELY REASON. WE LOOK AT THE CONDUCT OF BEACON IN THIS CASE AND MEASURE THAT CONDUCT TO THAT STANDARD, AND THE COURT, I FEEL, WILL CONCLUDE THERE WAS DECEPTIVE TRADE PRACTICES HERE.

HAS ANY OTHER COURT HELD TO THE CONTRARY, CREATING A CONFLICT ON THIS ISSUE?

YOU MEAN A LOWER DCA THAT, THERE IS A CONFLICT?

YES.

NO, SIR. I AM NOT AWARE OF ONE, JUSTICE HARDING. THE CLAUSE OF CONFLICT, WHERE THE CONFLICT IS, THOUGH, IS INHERENT IN THE DECISIONS, OVER 90%ENT OF DECISIONS UNDER THE -- 90%ENT OF THE DECISIONS -- 90 PERCENT OF THE DECISION INS THE FLORIDA DECEPTIVE TRADE PRACTICES ACT IS FOR SINGLE RELIEF.

YOU ARE SAYING THAT THERE IS NOT CONFLICT ON A SINGLE ACT, THAT THERE IS NOT CONFLICT WITH THAT POINT?

I AM CITING CONFLICT WITH A DCA.

NO OTHER DCA HAS SAID THAT A SINGLE ACT IS SUFFICIENT?

THERE IS NO OTHER DCA THAT HAS ADDRESSED THIS SITUATION. DCA IN FLORIDA. CORRECT. THIS IS A FIRST-TIME DECISION BEFORE THE FLORIDA SUPREME COURT AS WELL AS THE DCA. OUR CONCERN IS THAT, IF THIS PORTION OF BEACON IS IN ANY WAY UPHELD BY THIS COURT, THAT IT WOULD THWART PROSECUTION. THERE IS VIRTUALLY NO DISCOVERY IN SMALL CLAIMS COURT, TO DETERMINE WHETHER A PATTERN OF CONDUCT HAS BEEN VIOLATED OR IS SOME SORT OF PRACTICE, AND IT IS AN EXTREMELY IMPORTANT POLICY ISSUE.

CHIEF JUSTICE: THANK YOU VERY MUCH. I AM AFRAID THAT WE HAVE USED UP ALL OF THE TIME. COUNSEL.

GOOD MORNING. MAY IT PLEASE THE COURT. DAVID MAHER, FROM THE LAW FIRM OF HARKE AND CLASBY, AND AS AN INITIAL MATTER BY AND LARGE, I WOULD LIKE TO RELY UPON THE BRIEFS, WITH RESPECT TO WHAT THE COURT, I THINK, HAS BROUGHT UP AT THE INITIAL STAGES, AND THAT IS WHETHER OR NOT THERE IS ACTUALLY A CONFLICT HERE AND WHETHER OR NOT THIS WOULD BE AN ADVISORY OPINION, UNDER THE FACTS OF THIS CASE, AND THANK THE COURT, SOME OF THE COURT'S QUESTIONS ARE VERY CLEAR THAT THERE IS A PROBLEM HERE. THERE IS, IN FACT, NO CONFLICT WITH ANY OTHER DCA OPINION. I JUST WANT TO CLARIFY A FEW THINGS IN THAT REGARD. THE SARKIS VERSUS PATFORD OIL CASE WAS NOT A LEASE OR LESSEE CASE. THERE WAS, IN FACT, A RELATIONSHIP BETWEEN THE TWO PARTIES, BUT IN THAT CASE A SUPPLIER OF GASOLINE PRODUCTS, WHO WAS, ALSO, THE LESS OR, WAS GIVING LOWER-GRADE FUEL PRODUCTS THROUGH THE LESSEE, AND THAT WAS THE DECEPTIVE TRADE PRACTICE THAT WAS

AT ISSUE IN THE CASE, SO THAT DOES NOT AT ALL STAND FOR THE PROPOSITION OF A SINGLE ACT VERSUS METHODS OR PRACTICES, BUT AS I WILL GET TO IN A MINUTE I DON'T BELIEVE THAT THE SINGLE-ACT DISCUSSION THAT IS GOING ON HERE IS ACTUALLY BORNE ON OUT BITE COURT'S OPINION, AND I WILL GET TO -- BY THE COURT'S OPINION, AND I WILL GET TO THAT IN ONE SECOND.

WOULD YOU ADDRESS WHETHER THE DCA'S OTHER THIRD DISTRICT, SECOND DISTRICT CASES?

CERTAINLY, YOUR HONOR. AS I MENTIONED IN THE BRIEFS, THOSE CASES APPEAR TO BE CASES IN WHICH THERE WAS A SINGLE ACT THAT TOOK PLACE THAT GAVE RISE TO A VERDICT AND ULTIMATELY UPHELD ON APPEAL. I DON'T DISPUTE THAT AT ALL. HOWEVER, ULTIMATELY NONE OF THOSE CASES ADDRESSED THE ISSUE THAT IS BEFORE THE COURT TODAY AND THE ISSUE THAT THE FOURTH DCA ADDRESSED, AND THAT BEING CALLED THE SINGLE-ACT ISSUE, AND AT BEST IT WAS IMPLIED, AND I DON'T KNOW THAT IT EVEN RISES TO THAT LEVEL, YOUR HONOR. I DO WANT TO CLARIFY A LITTLE BIT, AGAIN, ABOUT SOME OF THE DISCUSSIONS OF WHAT IS AND IS NOT DICKTY IN -- DICTA IN THIS CASE. I THINK THE COURTS HERE AND BELOW HAS A GREAT DEAL OF DICTA AND IT, IRRESPECTIVE OF HOW THE COURT , BEACON PROPERTY MANAGEMENT OR ERNIE WILLIS.

IF WE DO FIND THAT A SINGLE ACT DOES SATISFY THE ACT, WHERE DOES THAT LEAVE YOUR CLIENTS?

I BELIEVE THAT THAT LEAVES OUR CLIENT THE SAME PLACE AS THE FOURTH DCA LEFT IT, AND THAT IS THAT THEY HAD ABSOLUTELY NO DUTY AS A MATTER OF CONTRACTOR LAW OR ANYWHERE ELSE, TO MAINTAIN THE PREMISE, THAT THIS WAS A DUTY THAT, BY CONTRACT, BY AGREEMENT BETWEEN PNR AND OCEAN ONE, THE OWNER OF THE BUILDING, THE CORPORATE OWNER OF THE BUILDING REQUIRED THE OWNER, OCEAN ONE, TO MAINTAIN THE PREMISES AND KEEP IT IN GOOD REPAIR, AND I THINK AND THAT IS ONE OF THE THINGS I WANTED TO CLARIFY WITH THE COURT HERE. I THINK THE RECORD WILL ABSOLUTELY BEAR OUT THE EXACT OPPOSITE OF WHAT YOU HEARD FROM THE PETITIONER. IT WILL ABSOLUTELY BEAR OUT THAT THE CONTRACT BETWEEN BEACON PROPERTY MANAGEMENT AND OCEAN ONE WAS FOR THE MANAGEMENT OF THE PROPERTY, COLLECTION OF RENTS AND IS SUCH, AND IT IS LAID OUT IN THE TESTIMONY OF JACAMINO, WHERE HE GOES OVER THAT VERY CONTRACT. ON THE OTHER SIDE, MR. JACAMINO, ALSO, TESTIFIED CLEARLY AND UNASSAILBLY, THAT THE CONTRACT BETWEEN PNR AND OCEAN ONE, THAT IS THE 20-YEAR, LONG-LEASE CONTRACT, ABSOLUTELY BY ITS TERMS, REQUIRES OCEAN ONE TO MAINTAIN AND KEEP IN GOOD REPAIR THE PROPERTY, SO THE RECORD WOULD BEAR THIS OUT.

YOU ARE TELLING US THAT THIS RECORD WOULD DEMONSTRATE TO US THAT, IF PNR HAD A PROBLEM WITH ANY KIND OF WATER LEAKAGE, ANY KIND OF AIR CONDITIONING PROBLEM THAT, THEY WOULD GO TO OCEAN ONE AND NOT TO BEACON MANAGEMENT, WITH THAT KIND OF COMPLAINT.

THAT'S CORRECT. IN FACT, AGAIN, THE RECORD WILL BEAR OUT THAT, AFTER, EXCUSE ME, AND PARTIALLY THIS IS BECAUSE THE CONTRACT BETWEEN BEACON PROPERTY MANAGEMENT AND OCEAN ONE HAD LAPSED, PRIOR TO THE SIGNING OF THE LONG-TERM LEASE BY PNR. PARTIALLY BECAUSE OF THAT, THE RECORD BEARS OUT THAT, IN FACT, MacJACAMINO, WHO WAS A REPRESENTATIVE OF OCEAN ONE INC. WHO COLLECTED THE RENTS THERE AFTER, HAS ALWAYS BEEN, IF YOU WILL, THE CONTACT PERSON BETWEEN THE LESSEE AND THE LESS OR HERE, AND HE SET UP BANK ACCOUNTS, INDEPENDENTLY OF THOSE PREVIOUSLY HELD BY BEACON PROPERTY MANAGEMENT, TO PUT THE RENTS IN, SO IN FACT THERE WAS AN INDEPENDENT BANK ACCOUNT, AFT LAPSE OF THE BEACON PROPERTY MANAGEMENT AGREEMENT, IN WHICH MacJACAMINO, WHO WAS THE CONTACT PERSON, WOULD PUT RENT MONEY INTO.

SO EVEN THOUGH BEACON MANAGEMENT HAD NOTHING TO DO WITH THIS PROPERTY AFTER PNR GOT IN. THERE WAS NO EVIDENCE IN THE RECORD, THE TRIAL COURT, BASED ON NO EVIDENCE IN THE RECORD, LET IT GO TO THE JURY, AND THE JURY JUST CALM WITH MALT I MILLION DOLLAR -- WITH A MULTI-MILLION DOLLAR VERDICT. WAS THERE ANY ARGUMENT THAT THERE WAS SOMETHING THAT BEACON DID, AFTER JULY OF 1994, THAT CAUSED THIS BUILDING TO FALL INTO DISA REPAIR AND TO -- INTO DISREPAIR AND FOR THE WALL TO COLLAPSE? ANYTHING AT ALL?

IN A SENSE THERE WAS, YOUR HONOR. THAT IS THE DIFFICULTY OF THIS CASE AT ALL LEVELS, AND THE TRIAL REALLY EVOLVED INTO AN INCREDIBLY MELEE, ABOUT MACK JACAMINO, WHO WAS PARTNERS WITH ERNIE WILLIS. THERE WAS THE TWO OF THEM AT THE TIME OF THIS TRIAL, SO THIS CASE REALLY EVOLVED INTO AN ATTEMPT TO FIND WHO COULD POSSIBLY PAY FOR WHAT HAPPENED IN THIS CASE.

WHAT WAS PRESENTED, THAT THE JURY HEARD ABOUT WHAT EITHER WILLIS OR BEACON DID, AFTER THE TIME THAT PNR TOOK OVER THE LEASE?

AT BEST, YOUR HONOR, IN MACK JACAMINO'S INITIAL TESTIMONY, WHICH, AGAIN, IS CONTRADICTED BY THE TESTIMONY WHICH GETS TO THE INITIAL CONTRACT, MACK JACAMINO TESTIFIED THAT ANY TIME PNR CAME TO HIM WITH A PROBLEM, HE TOLD THEM TO GO OVER THERE AND TELL BEACON PROPERTY MANAGEMENT, OWNED BY ERNIE WILLIS AND HIS WIFE, SO WHAT MACK JACAMINO WOULD DO IS PASS THE BUCK OVER TO ERNIE WILLIS.

SO WE KNOW HOW CLOSELY THESE ENTITIES WERE, OCEAN ONE WAS REALLY JACAMINO AND WILLIS AND THEIR WIVES, AND WILLIS, WHO APPARENTLY HAD THIS OTHER MORTGAGE, WAS BEACON MANAGEMENT. WE ARE NOT TALKING ABOUT --

THAT'S CORRECT, YOUR HONOR, ABSOLUTELY. AND QUITE FRANKLY, I DON'T KNOW HOW YOU COULD SQUARE UP THE JURY'S FINDING THAT BEACON DID NOT BREACH ITS CONTRACT TO MANAGE THE PROPERTY AND YET FIND THE CLAIM.

CERTAINLY IF IT WAS A BREACH OF CONTRACT CLAIM, AND SAY IT WAS BEACON THAT WAS THE MANAGEMENT COMPANY UNDER A CONTRACTUAL BASIS, PNR COULDN'T SUE THE MANAGEMENT COMPANY UNDER BREACH OF CONTRACT, SINCE THEY HAD NO DIRECT CONTRACTURAL RELATIONSHIP WITH THEM, AND WOULDN'T THAT BE AN ANSWER?

WELL, THERE WAS CERTAINLY NO FINDING BELOW AS TO THAT, AND THAT WAS ONE OF THE OTHER THINGS I WANTED TO CLARIFY, WHEN I STEPPED TO THE PODIUM THIS MORNING, AND THAT WAS THAT THERE WAS ABSOLUTELY NO FINDING BY THE JURY, AND YOU WILL FIND NOTHING IN THE RECORD, TO INDICATE THAT THE JURY FOUND NO THIRD PARTY BENEFICIARY STATUS HERE, AND ALL THROUGH THIS, AND, AGAIN, IF THE TRIAL TRANSCRIPT IS REVIEWED BY YOUR HONORS, YOU YOU WILL SEE ALL THROUGH THIS TRIAL, AN ATTEMPT TO DO JUST THAT, AN ATTEMPT TO DEMONSTRATE THAT SOMEHOW PNR WAS THE BENEFICIARY OF THIS MANAGEMENT CONTRACT, AND THE JURY ABSOLUTELY FOUND THAT THERE WAS NO BREACH OF CONTRACT. IT WAS NOT PRESENTED WITH THE ISSUE OF THIRD PARTY BENEFICIARY. I WOULD SAY, YOUR HONOR, THAT THAT IS A LEGAL ISSUE, AND THAT IF IN FACT THEY WERE NOT A THIRD PARTY BENEFICIARY OF THE CONTRACT, THAT CONTRACT SHOULD NOT HAVE GONE -- THAT CONTRACT CLAIM SHOULD NOT HAVE GONE TO THE JURY, BUT THAT IS NOT AT ISSUE IN THIS PROCEEDING.

LET ME SEE AND SEE WHAT YOUR THOUGHTS ARE, ANY RESPONSE TO IT THAT YOU HAVE AN ENTITY OR AN INDIVIDUAL THAT OBTAINS CONTROL OF A POSITION, WHERE THEY CAN IMPACT THE PROPERTY THAT SOMEONE ELSE HAS, AND HAVE AN INDIVIDUAL MOTIVE, FINANCIAL MOTIVE, TO TRY TO GET THOSE PEOPLE OUT OF THAT PROPERTY, FOR WHATEVER REASON. YOU KNOW, MAYBE SOMEBODY BUILT A SKY RISE NEXT TO THEM AND THE PROPERTY HAS GONE UP IN VALUE, AND THE RESTAURANT NO LONGER IS, REALLY, A GOOD TENANT, AND SO THEY KNOW THEY CAN'T GO, THEY GO TO THE LAWYER AND THE LAWYER SAYS YOU CAN'T TO SAY THEM OUT.

YOU ARE GOING TO -- YOU CAN'T JUST TOSS THEM OUT. YOU ARE GOING TO BE SUED. SO THEY WILL LET THE BUILDING GO DOWN THE TUBES AND LET THE WALLS FALL IN AND LET THE ELECTRICAL SYSTEM GO AND THEN THEY WILL WANT TO MOVE. UNDER THAT KIND OF SCENARIO, NOT JUST A FAILURE TO SWEEP THE HALLS BUT A FINANCIAL INTEREST THOSE THINGS ARE OUT, COULD YOU USE THE UNFAIR AND DECEPTIVE TRADE PRACTICES ACT AS A REMEDY UNDER THAT SCENARIO, WHETHER YOU AGREE THAT THAT IS WHAT HAPPENED HERE OR NOT, BUT WOULD THAT BE SUSCEPTIBLE?

IT IS QUITE POSSIBLE, YOUR HONOR, AND THERE ARE TWO REASONS WHY THAT DOESN'T APPLY TO THIS CASE, AND I WILL COVER THOSE BRIEFLY AND THEN GET TO THE CRUX OF THE ISSUE. FIRST OF ALL, IT IS CLEAR IN THIS RECORD THAT THERE WAS NO SHOWING AND A SCATTER-SHOT EFFORT TO PROVE AT TRIAL, TO SHOW THAT ERNIE WILLIS HAD A FINANCIAL MOTIVE, SEPARATE AND APART FROM OCEAN ONE, AND I THINK THAT IS BORNE OUT BY THE FACT THAT, WHETHER OR NOT THE BUILDING WAS SOLD, WHETHER OR NOT IT WAS THE RESULT OF THE COLLAPSE OF THE WALT OR ANYTHING LIKE THAT, WHEN THE BUILDING WAS SOLD, ASSUMING THAT ERNIE WILLIS WAS UNDERTAKING AN EFFORT TO GET THAT BUILDING SOLD, BY WHATEVER MEANS NECESSARY, WHEN THAT BUILDING WAS SOLD, THE CORPORATION MADE MONEY, AND IT THERE FOR WAS FOR THE BENEFIT OF THE CORPORATION, AND THE CASE LAW IS VERY CLEAR THAT, IN ORDER TO GET OUTSIDE OF THAT AND TO GET INDIVIDUAL LIABILITY, YOU HAVE TO DEMONSTRATE THAT IT WAS NOT IN THE BEST INTEREST OF THE CORPORATION FOR, IN THIS CASE, MR. WILLIS TO DO THAT, AND I THINK THE CASE LAW IS CLEAR, AND THAT IS MENTIONED IN THE BRIEF. I WOULD NOTE THE SLOAN CASE AND SOME OF THE OTHER CASES THAT ARE CITED. THE OTHER THING IS, AND IT GETS TO THE ACTUAL DELTA SITUATION, THAN IS THAT DELTA IS COMMONLY BELIEVED TO BE SUPPLEMENTAL TO OTHER CAUSES OF ACTION, AND I THINK THE CASE LAW BEARS OUT THAT NEARLY EVERY DELTA PLAINTIFF HERE BRINGS OTHER CAUSES OF ACTION, AND THERE WERE OTHER CAUSES OF ACTION AVAILABLE IN THIS CASE, AND THERE WILL BE UNDER THE SCENARIO YOUR HONOR BROUGHT OUT, FOR EXAMPLE GROSS NEGLIGENCE OR BREACH OF CONTRACT. THERE WAS A BREACH OF CONTRACT ACTION IN THIS CASE AGAINST OCEAN ONE AND THE PLAINTIFF SUCCEEDED ON THAT CLAIM. SO A GROSS NEGLIGENCE, A BREACH OF CONTRACT, POSSIBLY SOME SORT OF INDIVIDUAL ACTION AGAINST ERNIE WILLIS, IF THERE IS A LEVEL OF PROOF THAT IS NECESSARY UNDER THE LAW, THEN THAT IS QUITE POSSIBLE.

BUT JUST THIS FACTUAL SCENARIO, IS WHAT YOU ARE SAYING DOES NOT MEET THE STANDARD THAT, THIS REALLY IS A BREACH OF LEASE CASE THAT, THAT IS KIND OF YOUR ARGUMENT.

ABSOLUTELY, YOUR HONOR, AND NOW IF I COULD GET TO WHAT I THINK IS THE CRUX OF REVIEW HERE IS WHAT THE FOURTH HELD, WITH RESPECT TO DELTA OR THE STATUTE, THE CONSUMER STATUTE, AND WHAT IT DID NOT. AND THE COURT DID NOT HOLD THAT, AS A MATTER OF LAW, A SINGLE ACTOR TRANSACTION CAN NEVER GIVE RISE TO RELIEVE OR AN ACTION UNDER THE STATUTE, AND I WOULD POINT THE COURT TO, I HAVE GOT THE WESTLAW VERSION. I KNOW THAT THE APPENDIX HAS THE ORIGINAL, SO ON THE APPENDIX, IT IS PAGE 2, AT THE BOTTOM OF PAGE 2, IF YOUR HONORS HAVE THE CASE LAW, IT IS ON PAGE 568 OF THE CASE LAW, AND HERE IS WHERE THE COURT, I THINK, MAKES ITS HOLDING, WITH RESPECT TO THE LANDLORD, THAT IS OCEAN ONE IN THIS CASE. AND IT SAYS, QUOTE, A SINGLE INSTANCE OF DOING SOMETHING DOES NOT MAKE IT A METHOD OR A PRACTICE. EVIDENCE THAT THE LANDLORD ACTED IN A PARTICULAR WAY WITH THIS TENANT DOES NOT PROVE A REGULAR AND SYSTEMATIC WAY OF COMPETITION OR A HABITUAL OR CUSTOMARY ACTION OR WAY OF DOING SOMETHING. THE EVIDENCE IS LIMITED TO THE LEASE IN QUESTION AND DOES NOT IMPLY THE EXISTENCE OF A MET METHOD OR -- OF A METHOD OR OF A HABITUAL OR CUSTOMARY PATTERN OF CONDUCT, AND I THINK THAT, IN HOLDING THAT, THE COURT WAS NOT SAYING THAT A SINGLE INSTANCE CAN NEVER GIVE RISE TO DELTA.

ISN'T IT BEING CITED, THOUGH, FOR THE LATTER PROPOSITION?

THE CASE THAT THEY CITED, THE FIFTH DCA CASE, NOT ENTIRELY CLEAR ON THAT.

ALREADY.

IT COULD HAVE BEEN MISUNDERSTOOD THAT WAY BY THAT COURT, BUT, AGAIN --

JUST BY THE LANGUAGE THAT YOU HAVE READ, COULD IT NOT BE MISCONSTRUED THAT WAY?

I THINK THAT IT COULD, AND I THINK THAT THIS COURT CAN CLARIFY THAT, IF IT DEEMS NECESSARY, UNDER THE PROPER CIRCUMSTANCES, AND I THINK THAT --

SO YOU AGREE THAT, BECAUSE CERTAINLY "ACT" IS USED THROUGHOUT, THAT A SINGLE INSTANCE CAN GIVE RISE IN A PROPER CASE, TO --

THAT'S CORRECT, AND I THINK THAT THE FOURTH RECOGNIZES THAT, AS WELL, AND I WILL GET TO THAT YOUR HONOR, AND IN DOING SO, TALK ABOUT WHAT THE TRIAL LAWYERS, THE AMICUS DISCUSSED, AND THAT IS THE USE OF THE WORD "ACT", AND I WOULD POINT THE COURT TO ONE OF THE MOST SIGNIFICANT USES OF THE WORD "ACT" AND THAT IS IN CONJUNCTION WITH THE INJUNCTION PORTION OF THE REMEDY, AND THAT IS A DECLARATIVE INJUNCTION CAN BE DECLARED, IN THE ACT, TO BE DECEPTIVE AND UNFAIR, AND, AGAIN THAT IS WHY THIS IS A SUPPLEMENTARY THING. THE INJUNCTION, BY DEFINITION, DOES NOT HELP THE INDIVIDUAL PLAINTIFF IN THAT SITUATION. THE INJUNCTION IS MEANT TO PROTECT THOSE OTHER CONSUMERS WHO MAY BE AFFECTED BY A METHOD OR PRACTICE. AND SO WHAT YOU HAVE IS AN INDIVIDUAL ACT THAT IS OF THE THENATOR CHARACTER THAT IMPLIES, AS THE COURT SAYS, IMPLIES THAT IT IS PART OF A METHOD OR PRACTICE OF THE DEFENDANT, AND I THINK THAT THAT IS THE KEY ISSUE HERE.

BUT IT ALSO IS INCLUDED IN A CIVIL PENALTY AND THE ONE DEALING WITH SENIOR CITIZENS, IS IT NOT?

THAT'S CORRECT, AND --

IN ADDITION TO THE INJUNCTION SO HOW DOES THAT FIT IN?

AGAIN, YOUR HONOR, I THINK THERE ARE MANY PLACES WHERE "ACT" IS USED AND I THINK APPROPRIATELY SO, AND I DON'T THINK THAT IS INCONSISTENT WITH WHAT THE FOURTH HELD. FOR EXAMPLE, WHEN AN ENFORCING AUTHORITY CAN COME OUT THERE AND ACT, THE ENFORCING AUTHORITY IS COMING OUT AND DOING SO ON BEHALF OF MORE THAN AN INDIVIDUAL PLAINTIFF, AND THAT UNDER THE CLASS ACTION METHOD IN THE STATUTE. IT IS NOT SPECIFIC IN THE STATUTE, BUT I AM SURE YOUR HONORS ARE AWARE THAT CLASS ACTIONS UNDER THE UNFAIR TRADE PRACTICES ACT ARE VERY COMMON IN FLORIDA, IN THE DCA LEVEL, AND, AGAIN, A RECOGNITION THAT THIS STATUTE IS NOT JUST FOR THE INDIVIDUAL WHO HAS BEEN AFFECTED BUT THOSE WHO HAVE BEEN AFFECTED BY SIMILAR CONDUCT, AND I THINK THE ANALOGY HERE, AND AN ANALOGY THAT IS SQUARED UP BY THE FOURTH AND MAKES SENSE IN MY OPINION, AND THAT IS IF YOUR HONOR PURCHASES FROM ME A PRIVATE INDIVIDUAL, MY 1985 DODGE, AND I HAVE ROLLED BACK THE ODOMENTER ON THAT, AND I HAVE DISCOVERED THAT, YOU MAY HAVE A BREACH 6 CONTRACT ACTION, YOU -- A BREACH OF CONTRACT ACTION, YOU MAY HAVE A FRAUD CLAIM, YOU MAY HAVE A WARRANTY CLAIM. THERE ARE A NUMBER OF THINGS THAT YOU HEY HAVE, AND I THINK YOU WOULD HAVE, ALSO, A DELTA CLAIM, AND THE COURT WOULD SAY NO, BECAUSE IT IS NOT IMPLICIT NOR DOES IT INDICATE THAT IT IS OF THE METHOD OR NATURE THAT IT IS LIKELY TO A PRACTICE, BECAUSE I AM AN INDIVIDUAL, WHEREAS IF YOUR HONOR PURCHASES A CAR FROM A DEALERSHIP WHO IS IN THE BUSINESS OF SELLING CARS BY VOLUME, AND YOU HAVE AN ODE ONLYETER ROLLBACK SITUATION, THE VERY -- AN ODEOMETER ROLLBACK SITUATION, THE VERY EXIST ENOF THAT SITUATION IMPLIES THAT IT

MAY AND METHOD OR PRACTICE OF THE DEFENDANT, AND I THINK UNDER THAT SCENARIO, I THINK THE COURT REALIZES THAT THAT SINGLE ACT MIGHT GIVE RISE TO THE PROBABILITY OF UNFAIR TRADE PRACTICES.

WAS THERE MORE THAN ONE TENANT IN THE BUILDING?

THERE WERE MORE THAN ONE TENANT IN THE BUILDING. THAT'S CORRECT.

SO IF YOU CAN SHOW THAT THIS ACT OF LETTING THE BUILDING GO AFFECTS, IS SOMETHING THAT THEY DID THAT AFFECTED ALL OF THE TENANTS OF THIS BUILDING, DO WE, THEN, HAVE A SITUATION WHERE WE POSSIBLY HAVE AN ACTION UNDER THE STATUTE?

QUITE POSSIBLY, YOUR HONOR, YES, AND I THINK THAT, YOU KNOW, I GUESS WHAT IS BEING ASKED HERE NOW, IS WAS THE FOURTH CORRECT IN FINDING THAT? FIRST OF ALL, THERE WAS NO PRESENTATION OF EVIDENCE HERE, THAT THAT, THAT THIS COLLAPSE AFFECTED SEVERAL OTHER TENANTS, BUT I KNOW THAT THERE IS PROBABLY EVIDENCE IN THE RECORD, BOTH WAYS ON THAT. I DON'T REPRESENT THAT THE RECORD IS DEVOID OF ANY DISCUSSION ABOUT THAT. THE FACT IS THERE WAS MORE THAN ONE TENANT IN THAT BUILDING. BUT, AGAIN, THAT GOES BACK TO THE QUESTION OF THE DICTA HERE AND THE QUESTION OF CONFLICT. THE FACT REMAINS THAT, TO THE EXTENT THAT THE COLLAPSE OF THIS WALL AFFECTED MORE THAN ONE TENANT, AND THAT FACT WAS PRESENTED TO THE COURT APPROPRIATELY, IT WOULD ONLY BE AS TO THE ONE WHO HAD THE DUTY TO MAINTAIN, AND IT IS CLEAR FROM THE RECORD HERE THAT, AS A MATTER OF LAW, THE FOURTH FOUND THAT THE DEWY TO MAINTAIN WAS SOLELY WITH THE LANDLORD IN THIS CASE.

OKAY. SO THAT DOESN'T, REALLY, GO TO WHETHER OR NOT YOU HAVE A CAUSE OF ACTION AND THE ACT -- TO THAT THAT THAT DUTY TO MAINTAIN WAS SOLELY WITH THE LANDLORD IN THIS CASE.

OKAY. SO THAT DOESN'T, REALLY, GO TO WHETHER OR NOT YOU HAVE A CAUSE OF ACTION AND THE ACT IS THE DICTA.

I THINK A SINGLE CIRCUMSTANCE MIGHT GIVE RISE TO A DELTA VIOLATION, BUT IT THIS IS NOT THAT -- BUT THIS IS NOT THAT CASE.

WHAT IF THERE WAS A MANAGEMENT COMPANY THAT UNDERCUT ALL OTHER MANAGEMENT COMPANIES, IN TERMS OF HOW MUCH THEIR CONTRACT WITH THE LANDLORD, WHO IS GOING FOR, AND THAT THEY DID THAT, OF COURSE, TO PUT EVERYONE ELSE OUT OF BUSINESS, WOULD THE, AND THE TENANT SUFFERED, EVEN THOUGH THE CONTRACT WAS, OF COURSE, WITH THE LANDLORD, WOULD THE TENANT, UNDER THOSE CIRCUMSTANCES, NEVER HAVE A CLAIM UNDER DELTA, OR WOULD BE LIMITED TO THE LANDLORD WHO CONTRACTED? WHAT WOULD BE YOUR ARGUMENT UNDER THAT?

IF I UNDERSTAND YOUR HONOR'S QUESTION, IT IS NOT ENTIRELY CLEAR, BUT, AGAIN, YOU HAVE A SITUATION HERE, WHERE UNDER YOUR HONOR'S SCENARIO, THERE IS LIKELY A THIRD PARTY BENEFICIARY ARGUMENT TO BE MADE. AGAIN, IN THIS PARTICULAR CASE, YOU HAVE GOT TWO CONTRACTS. YOU HAVE GOT THE EXPIRED BEACON CONTRACT WITH OCEAN ONE AND THEN YOU HAVE GOT THE PNR LEASE WITH OCEAN ONE, AND THE PROBLEM IN THIS CASE FOR THE PET PEATERS IN MY -- FOR THE PETITIONERS IN MY VIEW, IS THAT THE BEACON CONTRACT NOT ONLY WAS EXPIRED BUT, ALSO, SPECIFICALLY OMITTED FROM THE DUTIES OF BEACON PROPERTY MANAGEMENT, THE MAINTENANCE OF THE PROPERTY. IT IS NOWHERE IN THE AGREEMENT, AND MACK JACAMINO WAS FORCED TO ADMIT THAT IN CROSS-EXAMINATION. AT THE SAME TIME YOU HAVE GOT A LEASE AGREEMENT THAT REQUIRES THE LANDLORD, OCEAN ONE, TO MAINTAIN AND KEEP IN PROPER REPAIR, THE BUILDING, SO TO ANSWER YOUR HONOR'S QUESTION, IF YOU HAVE GOT A SITUATION IN WHICH THE LEASE AGREEMENT DOES NOT SET FORTH WHO IT IS OR

WHETHER THERE IS ASSIGNMENT OF THAT DUTY TO A PROPERTY MANAGEMENT COMPANY THAT IS NOT JUST A PROPERTY MANAGEMENT COMPANY BUT IS, ALSO, A MAINTENANCE COMPANY, WHICH, AGAIN, WOULD SET IT APART FROM BEACON IN THIS CASE, BUT ASSUMING YOUR HONOR'S SCENARIO THAT THERE IS A CONTRACT BY A PROPERTY MANAGEMENT COMPANY WHICH ALSO MAINTAINS TO -- UNDER TOOK -- UNDER TAKES TO MAINTAIN THE PREMISES, THERE WOULD BE A CONTRACTUAL ACTION. THERE MIGHT, ALSO, BE A TRADE PRACTICES ACT, EXCUSE ME, CAUSE OF ACTION UNDER THE APPROPRIATE CIRCUMSTANCES, GIVEN WHAT THE FOURTH HAS SAID HERE.

CHIEF JUSTICE: COUNSEL, I AM HIM AFRAID THAT YOUR TIME HAS EXPIRED. THANK YOU ALL VERY MUCH. THE COURT WILL TAKE ITS MORNING RECESS. WE WILL BE IN RECESS UNTIL 20 MINUTES UNTIL. THANK YOU.